RECENT DEVELOPMENTS

COLLEGE EDUCATION A NECESSITY

Mitchell v. Mitchell
170 Ohio St. 507, 166 N.E.2d 396 (1960)

A divorce decree awarding to the wife custody of and support for five minor children was entered by the Common Pleas Court of Cuyahoga County in 1953. In 1958, the court, upon motion filed by the wife, modified the original support order and provided for additional support including the sum of five hundred dollars per year payable by the husband to the wife for each of the minor children electing to attend any accredited college. The court of appeals reversed that part of the judgment pertaining to the order of payment for college.[1] The supreme court reversed, holding that it was no abuse of discretion as a matter of law for the trial court to order payments by the father for the college education of the minor children.[2]

Under common law and by statute there exists a parental obligation of providing support for minor children which is ordinarily limited to the necessaries.[3] Whether a college education was such a necessity was first decided in *Middlebury College v. Chandler*,[4] in which a suit was brought by the college to recover tuition and other bills from a minor child representing the expenses of his college education. The court held such an education not to be a necessity for which an infant can render himself absolutely liable by contract, stating:

> Though more extensive attainments in literature and science tend greatly to elevate and adorn personal character, are a source of such private enjoyment and may justly be expected to prove of public utility, yet in reference to man in general, they are far from being necessary in a legal sense. The mass of our citizens pass through life without them.[5]

The rationale of the *Middlebury* opinion, though applied to a situation not involving divorce or support orders, partially explains some courts' refusal to award college payments as part of support orders in divorce decrees.[6] Minimum compulsory education requirements[7] and the discretion

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[1] Mitchell v. Mitchell, 81 Ohio L. Abs. 88, 158 N.E.2d 546 (Ct. App. 1959).

[2] Mitchell v. Mitchell, 170 Ohio St. 507, 166 N.E.2d 396 (1960).

[3] Ohio Rev. Code § 3109.05. "The court may order either or both parents to support or help support their children. . . ."; Ohio Rev. Code § 3103.03. "The husband must support himself, his wife, and his minor children out of his property or by his labor . . . ."; Hopkins v. Commissioner, 144 F.2d 683 (6th Cir. 1944). "Under the laws of Ohio the duty of the parent to support his infant child extends to necessary support which includes food, clothing, education, medical care and a suitable residence, all according to the father's means."

[4] 16 Vt. 683 (1844).

[5] *Id.* at 686.

[6] *Infra* note 17; Morris v. Morris, 92 Ind. App. 65, 171 N.E. 386 (1930); Straver v. Straver, 26 N.J. Misc. 218, 59 A.2d 39 (Ch. 1948) (dictum).

[7] Halsted v. Halsted, 228 App. Div. 298, 239 N.Y.S. 422 (1930). "Unlike the

enjoyed by non-divorced parents in decisions as to their children's higher education[8] have been cited as crucial factors in the courts' refusal to include a college education in the class of necessities.

The courts of other jurisdictions, however, cognizant of modern day requirements for specialized training and aware of the frequent denial of opportunities to children as a result of their parents' divorce, have classified a college education as a necesssity to be considered in the awarding of support orders when circumstances justify such a decision.[9] Providing no universally applicable standards, the decisions take into account the intelligence and aptitude of the child[10] and the father's ability and means to pay for such an education.[11]

This question was decided recently by an appellate court in Illinois,[12] holding that, "Where the father is of ample means, . . . education beyond the high school level for children of average or better scholarship . . . is regarded as a necessity."[13] The circumstances of the parties in a case which was decided at the same time by the Supreme Court of Indiana led the court to reach the opposite conclusion.[14] In addition to the father's modest means, the court stressed the fact that the Indiana legislature had met six times without acting after an earlier decision had ruled that a college education was not a necessary and the father could not be compelled to support his college-age minor son.[15]

Until the *Mitchell* case, there was no Ohio Supreme Court holding on

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furnishing of a common-school education to an infant, the furnishing of a classical or professional education by a parent to a child is not a necessary within the meaning of that term in law."

[8] Commonwealth v. Wingert, 173 Pa. Super. 613, 98 A.2d 203 (1953); However, in Commonwealth *ex rel.* Stomel v. Stomel, 180 Pa. Super. 573, 119 A.2d 597 (1956), the court held that though the father, even if financially able, is not required to furnish a college education, he must pay for public education beyond the minimum compulsory level.

[9] Jackman v. Short, 165 Ore. 626, 109 P.2d 860, 872, 33 A.L.R. 887 (1941). "Ordinarily, a child of divorced parents is in greater need of the help that a college education can give than one living in a home where marital harmony abides."

[10] Johnson v. Johnson, 346 Mich. 418, 78 N.W.2d 216 (1956); Esteb v. Esteb, 138 Wash. 174, 244 Pac. 264, on rehearing 246 Pac. 27, 47 A.L.R. 110 (1926).

[11] Hart v. Hart, 239 Iowa 142, 30 N.W.2d 748 (1948); Titus v. Titus, 311 Mich. 434, 18 N.W.2d 883 (1945); Golay v. Golay, 35 Wash. 2d 122, 210 P.2d 1022 (1949) (dictum).

[12] Maitzen v. Maitzen, 24 Ill. App. 2d 32, 163 N.E.2d 840 (1959).

[13] *Id.* at 843.

[14] Haag v. Haag, 163 N.E.2d 243 (Ind. 1959).

[15] Hachat v. Hachat, 117 Ind. App. 294, 71 N.E.2d 927 (1947). This line of reasoning, so often used when the court lacks the conviction to decide a question of public policy was aptly attacked in Molitor v. Kaneland Community Unit District N. 302, 18 Ill. 2d 11, 163 N.E.2d 89, 96 (1959). "The doctrine . . . was created by this court alone. Having found that doctrine to be unsound and unjust under present conditions, we consider that we have not only the power, but the duty, to abolish that [doctrine] . . . We closed our courtroom doors without legislative help, and we can likewise open them."

this precise issue. Where support for a college education was included in a separation agreement later incorporated into a divorce decree, the court did enforce these payments on the basis of the father's contractually expressed desire to furnish a college education for his children, the question of the necessity not being considered.[16] When no such agreement was present, an early appellate decision had held that, "the parental obligation to furnish necessaries does not comprehend a college education."[17]

Immediately prior to the *Mitchell* decision, the Juvenile Court of Cuyahoga County expressly held that a college education was a necessary where the mother, who had custody of the child, believed that the latter possessed the proper aptitude and desire to attend college.[18] At first blush this lower court holding would appear to have anticipated the supreme court's ruling on this issue, and that, by virtue of the *Mitchell* decision, the Ohio law is now such that a college education is to be considered a necessity for which provision is properly made in support orders. The court emphatically stated, however, that their decision was based only on the "determination that the trial court possesses the discretionary power to decide whether under given circumstances a certain parent may be required to provide or contribute to a college education for his child."[19]

This express declaration by the supreme court neglected to provide any standards or guides for the lower courts to follow in applying their "discretion." Nevertheless, because of the "qualified necessity" standard employed elsewhere,[20] and the reference to the "given circumstances" in the decision itself, perhaps, the court has, by implication, set forth similar limitations. Thus, Ohio joins these other states in the recognition of changing national and world conditions and the requirements needed to meet them.[21]

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[16] Robrock v. Robrock, 167 Ohio St. 479, 150 N.E.2d 421 (1958).

[17] Wynn v. Wynn, 6 Ohio L. Abs. 450 (Ct. App. 1928).

[18] Calogeras v. Calogeras, 10 Ohio Op. 2d 441, 163 N.E.2d 713 (Juv. Ct. 1959).

[19] *Id.* at 510.

[20] *Supra* notes 10 and 11.

[21] *Supra* note 18, quoting Thomas Jefferson: "I am not an advocate for frequent changes in laws and constitutions, but laws and institutions must go hand in hand with progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths discovered, institutions must advance also to keep pace with the times."